



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/397,491	09/15/1999	STANISLAV KHIRMAN	NARSP003	8814

758 7590 08/11/2005

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

NEURAUTER, GEORGE C

ART UNIT	PAPER NUMBER
----------	--------------

2143

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/397,491

Applicant(s)

KHIRMAN ET AL.

Examiner

George C. Neurauter, Jr.

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04042005.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Art Unit: 2143

DETAILED ACTION

Claims 29-48 are currently presented and have been examined.

Response to Arguments

Applicant's arguments filed 23 May 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claim 29-48 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant argues that the claimed invention produces an advantage of not introducing a point of failure with a network by the use of the claimed detector device. The Examiner does not consider this advantage to be sufficient to overcome the rejections of record. If the operational status of the injector device is critical to the operation of the invention, it is the Examiner's view that the failure of the detector device, which operates as recited in the claims, introduces a point of failure since the claim requires that, if the detector device fails, the steps of monitoring a plurality of request signals, determining whether a user is permitted access to data, and comparing a predetermined parameter associated with the user with a predetermined parameter associated with the data to determine permission to access the data and generating a response to the request signal as recited in the claim cannot occur. The

Art Unit: 2143

Examiner is required to consider the claim as a whole. See MPEP 2106 ("...[W]hen evaluating the scope of a claim, every limitation in the claim must be considered. Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered. See, e.g., *Diamond v. Diehr*, 450 U.S. at 188-89, 209 USPQ at 9") Therefore, the possibility of the failure of the detector device must be considered. The failure of the detector device, in view of the specification, particularly page 10, line 28 to page 11, line 5 as pointed out by the Applicant, does not specifically state how this failure occurs or the extent of the failure. Therefore, given the plain meaning of the term "operational failure" as required by MPEP 2111.01, the Examiner interprets an "operational failure" as a complete and total failure of the detector device. Given the claims' broadest reasonable interpretation as required by MPEP 2111, the Examiner interprets these claims wherein the request signals simply pass uninterrupted between a first device and a second device through a failed detector device on an intermediary device within the network and the above steps recited in the claims do not occur. Also, all dependent claims that further limit any steps recited in the independent claims

Art Unit: 2143

as being performed by the detector device will be interpreted in the same manner.

Therefore, the case is not in condition for allowance and the Examiner urges the Applicant to amend the claims to clearly and distinctly claim the subject matter the Applicant regards as their invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-48 are rejected under 35 U.S.C. 102(b) as being anticipated by "Teach Yourself TCP/IP in 14 days" ("TCP/IP").

Regarding claim 29, "TCP/IP" discloses a method for use in a detector device (referred to in the reference as "gateway"; pages 44 and 45) for controlling access to information on a network including a plurality of interconnected devices, the detector device coupled to the network between a first device ("sending device"; page 70) and a second device ("destination device"; page 70), the method comprising:

Art Unit: 2143

monitoring, independent of the first device and the second device, a plurality of request signals for data between the first device and the second device in the network (page 18, specifically "request primitive"), at least one request signal including a user identification parameter ("address"; page 70, specifically "Sending address"); determining whether a user identified by the user identification parameter in the at least one request signal is permitted access to the data; comparing a predetermined parameter associated with the user with a predetermined parameter associated with the data to determine permission to access the data; and generating a response to the request signal to alter communications between the first device and the second device in response to the comparison providing a first result and not altering communications between the first device and the second device in response to the comparison providing a second result; and the detector device allowing the plurality of request signals to pass uninterrupted between the first device and the second device regardless of the first result or the second result in response to an operation failure of the detector device, the operational failure comprising a non-functioning operation. (page 45, specifically "Simply put, the gateway's sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either

Art Unit: 2143

route on to the next gateway or pass it into the local network for routing to the proper user.")

Claims 36, 42, and 43 are also rejected since claims 36, 42, and 43 contain substantially the same limitations as recited in claim 29.

Regarding claim 30, "TCP/IP" discloses a method of controlling access of claim 29, wherein the provided response comprises allowing access to the data when the predetermined parameter associated with the user is greater than or equal to a predetermined parameter associated with the data. (page 45, specifically "Simply put, the gateway's sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either route on to the next gateway or pass it into the local network for routing to the proper user.")

Claims 38 and 44 are also rejected under 35 USC 102 (e) since claims 38 and 44 contain the same limitations as recited in claim 30.

Regarding claim 33, "TCP/IP" discloses the method of claim 29, wherein the predetermined parameter is one from a group comprising a positive monetary value, a positive time value, a bandwidth value, a quality of service value, and a content rating. (page 45, specifically "Simply put, the gateway's sole task is to receive a Protocol Data Unit (PDU) from either the

Art Unit: 2143

internetwork or the local network and either route on to the next gateway or pass it into the local network for routing to the proper user.")

Claims 41 and 47 are also rejected since claims 41 and 47 contain the same limitations as recited in claim 33.

Regarding claim 31, "TCP/IP" discloses a method of controlling access of claim 29, wherein the provided response comprises allowing access to the data when the predetermined parameter associated with the user is less than or equal to a predetermined parameter associated with the data. (page 45, specifically "Simply put, the gateway's sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either route on to the next gateway or pass it into the local network for routing to the proper user.")

Claims 35 and 45 are also rejected since claims 35 and 45 contain the same limitations as recited in claim 31.

Claim 37 is also rejected since claim 37 contains the same limitations as recited in claim 31.

Claim 40 is also rejected since claim 40 contains the same limitations as recited in claim 35.

Regarding claim 32, "TCP/IP" discloses the method of claim 29, wherein the provided response comprises re-directing the

Art Unit: 2143

data signal to a third device in response to the predetermined parameter associated with the user being less than the predetermined value associated with the data, the third device allowing for a resetting of the predetermined parameter to a new parameter comprising a value greater than or equal to the predetermined parameter associated with the data. (page 45, specifically "Simply put, the gateway's sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either route on to the next gateway or pass it into the local network for routing to the proper user.")

Claims 39 and 46 are also rejected since claims 39 and 46 contain the same limitations as recited in claim 32.

Claim 48 is also rejected since claim 48 contains the same limitations as recited in claim 34.

Claims 29-48 are rejected under 35 U.S.C. 102(a) as being anticipated by Official Notice.

Examiner takes Official Notice (see MPEP § 2144.03) that request signals containing a user identification parameter allowed to pass uninterrupted between a first device and a second device through an intermediary device in a network system such as a "gateway" or "router" or "proxy" was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this

Art Unit: 2143

action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or reputation of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Claims 29-48 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's admitted prior art.

Applicant's admitted prior art discloses a first device ("client") and a second device ("server") wherein requests signals ("data packet") containing a user identification parameter (the "data packet" inherently containing a header

Art Unit: 2143

containing a client address) pass uninterrupted through an intermediary device in a network ("proxy server") (see Figure 1A and page 9, lines 9-19 of the specification).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5 995 628 to Kitaj et al;

US Patent 6 256 739 to Skopp et al;

US Patent 6 327 242 to Amicangioli et al;

US Patent 6 772 200 to Bakshi et al;

US Patent Application Publication 2002/0161676 to
Vadlamani;

Howe, Denis. "fault tolerance", Free On-Line Dictionary of Computing, posted 6 April 1995,
<<http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?fault+tolerance>>,
1 page.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

Art Unit: 2143

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

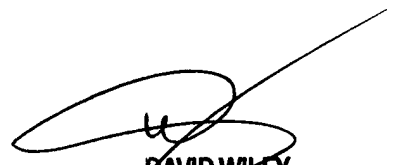
Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2143

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcn



DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100